

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

WARREN E BELL,

Plaintiff,

v.

KING COUNTY et al.,,

Defendants.

Case No. 2:22-cv-00387-JCC-TLF

ORDER

This matter comes before the Court on the following motions submitted by plaintiff :

(1) Motion to Strike Defendants' Response in Opposition to Plaintiff's Motion for Summary Judgment (Dkt. 33);

(2) Second Motion to Strike Defendants' Response in Opposition to Plaintiff's Motion for Summary Judgment (Dkt. 37);

(3) Motion to Strike Defendants' Motion for Summary Judgment (Dkt. 50);

(4) Plaintiff's First Motion to Compel (Dkt. 23); and

(5) Plaintiff's Second Motion to Compel (Dkt. 52).

For the reasons discussed below, plaintiff's motions are DENIED.

DISCUSSION

Plaintiff initiated this action on August 16, 2021 in King County Superior Court. Dkt. 1. The action was removed to the District Court on March 29, 2022. Dkt. 1. Plaintiff

1 asserts numerous claims under 42 U.S.C. § 1983 and state law, alleging violations of  
2 his Fourth, Eighth, and Fourteenth amendment rights, *Monell* liability, false arrest and  
3 imprisonment, and intentional infliction of emotional distress. Dkt. 2-1.

4 Pursuant to the Court's pretrial scheduling order, the parties were instructed to  
5 note all motions related to discovery for no later than November 18, 2022. Dkt. 18. The  
6 discovery period closed on December 2, 2022, and the parties were instructed to file  
7 and serve dispositive motions no later than January 5, 2023. *Id.* Plaintiff moved for  
8 summary judgment on October 13, 2022. Dkt. 19. Defendants responded to plaintiff's  
9 motion on October 28, 2022. Dkt. 26. Plaintiff has moved twice to strike defendants'  
10 response. Dkts. 33, 37. Defendants moved for summary judgment on November 4,  
11 2022 (Dkt. 39), which plaintiff has also moved to strike. Dkt. 50. Both motions for  
12 summary judgment are pending before the Court.

13 A. Plaintiff's Motions to Strike Defendants' Response to Motion for Summary  
14 Judgment

15 Plaintiff argues that defendants' response should be stricken because the  
16 response was untimely filed and because the response exceeds the page limit without  
17 leave to file overlength brief. Dkt. 33. Plaintiff also argues that the Court should strike  
18 the response because plaintiff contends that the King County Sherriff Department has  
19 conducted subsequent blood test on the sample extracted from plaintiff after his arrest.  
20 Dkt. 37. Plaintiff states that he does not have access to the warrants for these  
21 subsequent blood tests. Dkt. 37.

22 Pursuant to Local Civil Rule 7(d)(3), for motions to summary judgment, "[a]ny  
23 opposition papers shall be filed and served no later than the Monday before the noting  
24 date. If service is by mail, the opposition paper shall be mailed not later than the Friday  
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1 preceding the noting date.” The noting date for plaintiff’s motion for summary judgment  
2 is November 4, 2022. Dkt. 19. Accordingly, defendants’ response needed to be filed on  
3 or before October 31, 2022 and mailed on or before October 28, 2022. Defendant filed  
4 and mailed their opposition on October 28, 2022. Dkt. 26. Defendants’ response was  
5 timely filed and mailed.

6 Pursuant to Local Civil Rule 7(e)(3), oppositions to motions for summary  
7 judgment must not exceed twenty-four pages – not including captions, tables of  
8 contents, tables of authorities, signature blocks, and certification of service. LCR  
9 7(e)(3); LCR 7(e)(6). Defendants’ response to plaintiff’s motion for summary judgment is  
10 eighteen pages. The opposition does not exceed the page limit set forth in the local  
11 rules.

12 Plaintiff’s complaint alleges that the defendants violated plaintiff’s rights by  
13 arresting plaintiff, obtaining a warrant for a blood draw, drawing plaintiff’s blood on the  
14 night of his arrest and refusing to reimburse plaintiff for impounding plaintiff’s vehicle.  
15 Plaintiff’s complaint does not allege that the defendants conducted any subsequent  
16 illegal searches, blood draws or blood tests after the initial blood draw. Plaintiff raises  
17 this issue for the first time in opposing defendants’ motion for summary judgment.  
18 These allegations of additional searches are not part of plaintiff’s complaint and  
19 therefore not properly before the Court on plaintiff’s motion for summary judgment.

20 Based on the foregoing, plaintiff’s motions to strike defendants’ response in  
21 opposition to plaintiff’s motion for summary judgment are DENIED. Dkt. 33, 37.  
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1       B. Plaintiff's Motion to Strike Defendants' Motion for Summary Judgment

2           Plaintiff filed this motion pursuant to Federal Rule of Civil Procedure 12(f). Dkt.  
3 50. Plaintiff argues that plaintiff's arrest was illegal and the King County Superior Court  
4 never had proper jurisdiction over plaintiff's criminal case. Dkt. 50 at 1-4. Accordingly,  
5 plaintiff contends that the motion for summary judgment should be stricken for being  
6 scandalous matter. Dkt. 50 at 4.

7           The function of Fed. R. Civ. P. 12(f) is to avoid wasting time and money litigating  
8 spurious issues -- by dismissing those issues prior to trial. *Whittlestone, Inc. v. Handi-*  
9 *Craft Co.*, 618 F.3d 970, 973-74 (9th Cir. 2010). The language of Rule 12(f) limits its  
10 applications to defenses in a pleading. Fed. R. Civ. P. 12(f). A pleading is defined as:  
11 "(1) a complaint; (2) an answer to a complaint; (3) an answer to a counterclaim  
12 designated as a counterclaim; (4) an answer to a crossclaim; (5) a third-party complaint;  
13 (6) an answer to a third-party complaint; and (7) if the court orders one, a reply to an  
14 answer." Fed. R. Civ. P. 7. If the motion is directed to one of these pleadings, then the  
15 Court analyzes whether the issue sought to be stricken is: "(1) an insufficient defense;  
16 (2) redundant; (3) immaterial; (4) impertinent; or (5) scandalous." *Whittlestone, Inc.*, 618  
17 F.3d at 973-74.

18           Plaintiff moves to strike defendants' motion for summary judgment. A motion for  
19 summary judgment is not considered a pleading under Fed. R. Civ. P. 7. Accordingly,  
20 Fed. R. Civ. P. 12(f) is inapplicable, and plaintiff's motion to strike is DENIED. Dkt. 50.

21       C. Plaintiff's Motions to Compel

22           Pursuant to Fed. R. Civ. P. 37 a party may move for an order compelling a party  
23 to appropriately respond to discovery when a party fails to produce documents or permit  
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1 inspection as required by Rule 34. Fed. R. Civ. P. 37(a)(3)(B)(iv). Rule 34 allows a party  
2 to serve on another party a request for production within the scope of Rule 26(b). Fed.  
3 R. Civ. P. 34(a). Rule 26(b)(1) states:

4 Unless otherwise limited by court order, the scope of discovery is as  
5 follows: Parties may obtain discovery regarding any nonprivileged matter  
6 that is relevant to any party's claim or defense and proportional to the  
7 needs of the case, considering the importance of the issues at stake in the  
8 action, the amount in controversy, the parties' relative access to the  
9 relevant information, the parties' resources, the importance of the  
10 discovery in resolving the issues, and whether the burden or expense of  
11 the proposed discovery outweighs its likely benefit. Information within this  
12 scope of discovery need not be admissible in evidence to be discoverable.

13 Under Fed. R. Civ. P. 33, the purpose of interrogatories is to "limit and clarify the  
14 issues for the parties in preparation for further trial proceedings." *Soria v. Oxnard Sch.*  
15 *Dist. Bd of Trs.*, 488 F.2d 579, 587 (9th Cir. 1973). If the responding party objects, any  
16 objection must be plain and specific, to allow the court to understand the specific  
17 objectionable characteristic being asserted by the responding party. *Davis v. Fendler*,  
18 650 F.2d 1154, 1160 (9th Cir. 1981). According to Fed. R. Civ. P. 34, requests for  
19 production, including requests for electronically stored information (ESI) and tangible  
20 things, must be responded to either by "stat[ing] that inspection and related activities will  
21 be permitted as requested or stat[ing] with specificity the grounds for objecting to the  
22 request, including the reasons." Fed. R. Civ. P. 34(b)(2)(C). If the producing party  
23 objects to part of a request, the producing party is required to include in the objection, a  
24 statement that specifies which part is being objected to, "and permit inspection of the  
25 rest." *Id.*

26 A party is only required to produce documents and records within their  
27 "possession, custody or control." *United States v. International Union of Petroleum &*

1 *Industrial Workers*, 870 F.2d 1450, 1452 (9th Cir. 1989) (citing Fed. R. Civ. P. 34(a)).  
2 The party seeking production of the document bears the burden of proving that the  
3 opposing party has possession of the document or evidence requested. *Id.* Additionally,  
4 the moving party bears the burden of showing that the discovery responses were  
5 incomplete. *Daiflon, Inc. v. Allied Chemical Corp.*, 534 F.2d 221, 227 (10th Cir. 1976).

6 A district court has broad discretion to grant or deny a motion to compel. See  
7 *Hallett v. Morgan*, 296 F.3d 732, 751 (9th Cir. 2002). Under Fed. R. Civ. P. 26(b)(2)(C),  
8 the Court is required to limit the frequency or extent of discovery if the discovery  
9 requested is “unreasonably cumulative or duplicative, or can be obtained from some  
10 other source that is more convenient, less burdensome, or less expensive,” or if the  
11 requesting party “has had ample opportunity to obtain the information by discovery in  
12 the action,” or if the requesting party is seeking information that is outside of the scope  
13 of discovery under Rule 26(b)(1).

14 I. Plaintiff’s First Motion to Compel

15 Plaintiff’s first motion requests a Court order compelling the following documents  
16 from defendants: (1) the Declaration in Support of Search Warrant for Evidence of a  
17 Crime; (2) the name and badge number of the King County Sheriff’s Office (“KCSO”) backup deputy on August 31, 2019 after 11:07:27 p.m. that conducted the inventory  
18 search of Plaintiff’s vehicle; (3) the name and badge number of each officer or civilian  
19 who was present during the blood draw at King County unincorporated precinct 4; (4)  
20 surveillance video at unincorporated precinct 4; and (5) in-car video of the KCSO  
21 backup deputy on August 31, 2019.  
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1 With respect to plaintiff's first two requests, defendants state that they have  
2 already provided responsive documents and have responded in full. See Dkt. 48  
3 (Declaration of Erica Brunette) at ¶ 3. It is plaintiff's burden to show that defendants'  
4 responses were incomplete, and he has failed to do so here. See *Daiflon, Inc. v. Allied*  
5 *Chemical Corp.*, 534 F.2d 221, 227 (10th Cir. 1976). Therefore, plaintiff's motion to  
6 compel (1) the Declaration in Support of Search Warrant for Evidence of a Crime and  
7 (2) the name and badge number of the KCSO backup deputy on August 31, 2019 after  
8 11:07:27 p.m. that conducted the inventory search of Plaintiff's vehicle is DENIED.

9 Similarly, with respect to plaintiff's request of the names and badge numbers of  
10 each officer or civilian who was present during the blood draw at King County  
11 unincorporated precinct 4, defendants have responded with the information that is within  
12 their custody. Dkt. 47 at 3. They identified Dep. Stephens, Phlebotomist Erin Hilliard,  
13 and a security guard. *Id.* Defendants further informed plaintiff that any additional  
14 information would have to come from Highline Hospital, where plaintiff's blood was  
15 drawn; Highline Hospital is the custodian of their own records. *Id.* Plaintiff has not  
16 shown that defendants' response was incomplete or that they are withholding  
17 responsive information. Thus, plaintiff's motion to compel the names and badge  
18 numbers of each officer or civilian who was present during the blood draw at King  
19 County unincorporated precinct 4 is DENIED.

20 Finally, plaintiff requests surveillance video from unincorporated Precinct 4 and in  
21 car video for the backup KCSO deputies. Defendants have informed plaintiff that while  
22 unincorporated Precinct 4 did have video surveillance for their hallways in 2019, that  
23 surveillance had a retention period of 20-25 days before it was overwritten. Thus, that  
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1 video surveillance is no longer available. Further, defendants informed plaintiff that in  
2 2019, KCSO deputies did not have in-car video capabilities. Defendants are only  
3 required to produce records within their “possession, custody or control,” and it is  
4 plaintiff’s burden of proving that defendants have possession of the information  
5 requested. *United States v. International Union of Petroleum & Industrial Workers*, 870  
6 F.2d 1450, 1452 (9th Cir. 1989) (citing Fed. R. Civ. P. 34(a)). Plaintiff has not met this  
7 burden here. Plaintiff does not identify any basis for a belief that any of the requested  
8 video surveillance evidence exists and is being withheld. Therefore, plaintiff’s motion to  
9 compel the surveillance video at unincorporated precinct 4 and in-car video of the  
10 KCSO backup deputy on August 31, 2019 is DENIED.

11 II. Plaintiff’s Second Motion to Compel

12 Plaintiff filed his second motion to compel on November 28, 2022. Dkt. 52.  
13 Plaintiff’s motion is untimely as the Court, on August 26, 2022, informed the parties that  
14 discovery motions should be noted for no later than November 18, 2022, so that the  
15 responding party could answer by the discovery cut-off -- December 2, 2022. Dkt. 18.  
16 Plaintiff’s motion was noted for December 16, 2022. Plaintiff has not shown good cause  
17 for extending the discovery period. Nor did plaintiff make a timely request to the Court to  
18 extend the deadline to file discovery-related motions. Thus, plaintiff’s motion to compel  
19 is DENIED as untimely<sup>1</sup>.

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21 <sup>1</sup> Plaintiff appears to be requesting an order compelling defendants to produce the following documents:  
22 (1) the search warrant signed by Judge Nathaniel Green Jr., on September 1, 2019; (2) the declaration in  
23 support of this search warrant; and (3) the return of the search warrant. Dkt. 52. While the Court denies  
24 plaintiff’s motion as untimely, it appears that defendants have already provided plaintiff with the requested  
25 documents, and plaintiff attached such documents to his own summary judgment motion. Dkt. 52-1 at 2;  
Dkt. 19-1 at Exhibits 1-3.



ORDER

For the reasons discussed above, the Court ORDERS as follows:

Plaintiff's Motion to Strike Defendant's Response in Opposition to Plaintiff's Motion for Summary Judgment (Dkt. 33); Second Motion to Strike Defendant's Response in Opposition to Plaintiff's Motion for Summary Judgment (Dkt. 37); Motion to Strike Defendant's Motion for Summary Judgment (Dkt. 50); Plaintiff's First Motion to Compel (Dkt. 23); and Plaintiff's Second Motion to Compel (Dkt. 52) are DENIED.

Dated this 24th day of January, 2023.



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Theresa L. Fricke  
United States Magistrate Judge